

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 757 of 1982

with

CIVIL APPLICATION No 8637 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HARIJAN PUNJA RAMA

Versus

DIST PANCHAYAT JAMNAGAR

Appearance:

MR BHUSHAN B OZA for Petitioners

MR PV HATHI for Respondent No. 1

MISS KN VALIKARIMWALA, AGP for Respondent Nos. 2 & 3

MR SANDIP C SHAH for Respondent No. 4

NOTICE SERVED for Respondent No. 5

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 23/04/99

ORAL JUDGEMENT

This appeal under Section 30 of the Workmen's Compensation Act, 1947 is directed against the judgment and decree dated 16.9.1981 passed by the learned Commissioner for Workmen's Compensation at Jamnagar in Misc. Application No. 28 of 1977.

2. On 13.7.1976 Harijan Rana Paujan, young man of 18 years , died while he was standing on the rear side of a water tanker which was being driven by respondent No. 5 herein. The tanker belonged to the District Panchayat and was under the charge of respondent No.3. Contending that the deceased died in the course of employment under the District Panchayat, the parents of the deceased filed the above numbered application under the Workmen's Compensation Act (hereinafter referred to as "the Act") before the learned Commissioner at Jamnagar. The learned Commissioner dismissed the application on the ground that the deceased was not employed as a workman by the District Panchayat nor had the accident arisen in the course of employment of the deceased.

3. Aggrieved by the above judgment and award, the original applications - parents of the deceased filed the present appeal in the year 1982. The appeal has reached hearing today, but unfortunately by this time original applicant No. 1-father of the deceased has also expired. The mother of the deceased is, therefore, prosecuting this appeal in her own right as well as the heir of her deceased husband.

4. Mr BB Oza, learned counsel for the appellant has vehemently submitted that the learned Commissioner has proceeded on the footing as if the deceased was never employed by the District Panchayat and, therefore, the application for compensation was not at all maintainable. Mr Oza has taken the Court through the evidence led on behalf of the parties. The father of the deceased examined himself as witness No. 1 for the applicants. He stated that his son was going for spreading concrete/gravel for laying down of road and that on the date of accident the Supervisor in the Public Works Department, looking after the road had gone with the deceased to Samana for collecting tools and that in the evening he came to know that the deceased had fallen down from the tanker and succumbed to the injuries at Irwin Hospital at Jamnagar. The deceased was working on the road for the last 6 to 7 months at the daily rate of Rs.5.50. It is true that he was not present at the site of the accident, but nothing substantial is brought out in his cross-examination to show that he could not be relied upon as a witness except the fact that he was an interested witness inasmuch as he was the father of the deceased.

The second witness for the applicants was Hira Raja, a labourer who claimed to have seen the deceased

going with the other labourers and collecting the tools and thereafter getting on to the tanker. The deceased was standing on the rear platform of the tanker and he heard the deceased falling down from the tanker. The said witness also denied the suggestion that the witness was giving false evidence. Nothing substantial is brought out in his cross-examination to shake his credibility as a witness.

The third witness examined on behalf of the applicants was Bavji Ali who also claimed to have been present at the time of the accident and saw the boy falling down from the tanker when the driver applied sudden breaks. He also saw that the deceased was thereafter taken in the tanker cabin to the hospital where the deceased ultimately succumbed to the injuries. In the cross-examination of the said witness nothing substantial is brought out to shake his credibility.

5. As far as the opponents are concerned, Hariivadan Chamanlal Bhatt, Supervisor with respondent No.1-District Panchayat was examined as the sole witness. The witness stated in examination-in-chief that on the date of the accident they had gone to village Samana in a tanker and the tanker was being driven by respondent No.5-Sumra Juma Isa and that they had all gone to village Samana for collecting tools, but on the date of the accident, deceased Rana Punja was not on duty. The witness also stated that "earlier this boy was working as a casual labourer. His daily wages was Rs.5.00". In the cross-examination, the witness admitted - "It is true that we were making arrangements on that day for commencing the work of metal spreading on Dhrafa-Samana road. The work had stopped for about ten days. Till the time the work had stopped before one week, the deceased boy was coming with us for work..... We told our mistry to bring labourers on that day. We do not carry the tools but it is not true that we had called the deceased from his residence for carrying the tools. The tanker was to go to Gebansha Pir for filling water. One can go to Gebansha Pir via Narmana."

It is thus clear that the defence taken up by the opponents that the deceased was never employed as a workman by the District Panchayat was not true as the Supervisor himself admitted that the deceased was employed as a casual labourer at a daily wage of Rs.5/and that the work had stopped for about 10 days prior to the date of the accident. Hence, the Panchayat record would naturally not show the deceased as having been employed for 10 days prior to 13.7.1976. It was not the case of

the applicants that the deceased had gone to the office of the District Panchayat and that from there he had gone to the site. It was the specific case of the applicants that the deceased was picked up from his residence and the Supervisor also admitted that the tanker was to go to Gebansha Pir for filling water and that one can go to Gebansha Pir via Narmana where the deceased and the applicants were residing. Hence, the case put up by the applicants was not only probable but also borne out from the evidence on record and the findings of the opponents that the deceased was never employed as a workman with the District Panchayat stands falsified. It is thus clear that the deceased sustained injuries in the course of his employment with the District Panchayat and that he succumbed to the injuries on the same day while being taken to or after reaching the Irwin Hospital at Jamnagar.

6. The learned Commissioner has observed in his order that there is no evidence except the bare words of the deceased father to prove that the deceased was employed as a workman by opponent No. 1 and then the learned Commissioner observed that the District Panchayat is a statutory body and is bound to maintain all the registers as per rules. The learned Commissioner drew adverse inference against the applicants that they have not asked to produce the record like attendance register or pay register.

7. Mr PV Hathi, learned Counsel for the District Panchayat also reiterated the above submissions and further submitted that the attendance register maintained by the office of the Executive Engineer did not show the deceased as having been employed as a labourer or worker after 8.7.1976. The learned counsel has also relied on the averment to the effect that the deceased was not employed between 8.7.1976 and 5.8.1976. The accident in question took place on 13.7.1976. Hence, there can be no question of the deceased being employed after the date of accident as he succumbed to the injuries on the same day. As far as the prior period is concerned, the supervisor had stated in his evidence that the work for which the deceased was employed earlier was closed for about 10 days prior to the date of the accident and, therefore, obviously the name of the deceased would not find place in the attendance register after 3.7.1976.

8. Mr Hathi further submitted that in any view of the matter, this Court can interfere only when the appeal involves a substantial question of law and that at the highest the learned Commissioner had erred in not properly appreciating the evidence on record.

Though the contention appears to be prima facie attractive, it has to be realized that a substantial question of law means a substantial question of law as between the parties and not a question of law of general importance. The gross error committed by the learned Commissioner in ignoring the material evidence on record, that is, the admission by the supervisor that the deceased was employed as a casual labourer and that the work in question had stopped for about 10 days prior to the date of the accident and that on the date of the accident the supervisor told the mistri to bring the labourers on that day and that the tanker was to go to Gebhasan Pir for filling water via Narwana, the village where the deceased was residing. All these important pieces of evidence were not even considered by the learned Commissioner and, therefore, this is not a matter where the question is whether the learned Commissioner had properly or improperly appreciated the evidence on record. The learned Commissioner, therefore, did commit substantial error in law in not at all considering the aforesaid material evidence on record.

9. In view of the above discussion, the appeal deserves to be allowed and respondent Nos. 1, 3, 4 and 5 are required to pay the amount of compensation worked out to Rs.16,800/- to the appellant alongwith costs and interest.

10. As far as the payment of penalty under the provisions of Section 4A of the Act is concerned, ordinarily this Court would have passed an order for payment of penalty also to the appellant because the stand taken up by the District Panchayat appears to be contrary to the evidence on record. However, it appears that the District Panchayat took up the said stand because the name of the deceased was not found in the attendance register. It further appears that since the deceased was picked up from his residence on the way to the site of the work, his name was not entered in the attendance register in the morning and since the deceased met with the accident in the course of his employment and succumbed to the injuries after the deceased was removed to the hospital by the supervisor and other labourers working for the District Panchayat, they did not want to shoulder the responsibility of any possible liability to pay compensation and, therefore, they might have avoided to enter the name of the deceased in the record. Hence, while deprecating the said stand of the staff members of the District Panchayat, the Court would not pass an order of penalty against the District Panchayat. Hence, the

following order is passed :-

ORDER

- (i) The judgment and award dated 16.1.1981 passed by the learned counsel for Workmen's Compensation at Nadiad in Misc. Application No. 28 of 1977 is hereby set aside. The said application is allowed. Respondent Nos. 1, 3, 4 and 5 are held to be jointly and severally liable to pay an amount of Rs.16,800/- as compensation under the Workmen's Compensation Act to the appellant herein alongwith interest at the rate of 6% per annum from the date of filing of the application i.e. 27.9.1977 and with costs.
- (ii) The amount awarded as per this judgment shall be deposited by the aforesaid respondents within three months from today. In case the amount alongwith interest as aforesaid is not deposited within the three months, the amount awarded by this Court shall carry interest at the rate of 12% per annum from the date till the date of deposit.
- (iii) Upon the amount being deposited, the learned Commissioner shall either invest the entire amount in a Fixed Deposit with a Nationalized Bank with permission to the appellant to withdraw the periodical interest accruing on the Fixed Deposit Receipt or the learned Commissioner may invest the amount in a Nationalized Bank in an appropriate scheme so that the appellant can be paid the principal as well interest amount over a period of 10 years so that the appellant gets a part of the principal amount as well as interest accruing on the balance amount.
- (iv) The appellant shall not be permitted to encash or encumber the Fixed Deposit before the stipulated period without prior permission of the learned Commissioner.

11. Since the appeal is disposed, Civil Application No. 8637 of 1998 does not survive and is accordingly disposed of.

Sd/-

April 23, 1999 (M.S. Shah, J.)

sundar/-